

IDAHO CONSERVATION LEAGUE

IBLA 94-276

Decided September 22, 1994

Appeal from a decision of the Bennett Hills Resource Area Manager, Bureau of Land Management, rejecting a protest against a timber sale. ID O50-EA-94001.

Affirmed.

1. Timber Sales and Disposals

A protest of a timber sale that was not received by BLM within 15 days following advertisement of the sale against which it was directed was properly rejected because it was untimely filed.

APPEARANCES: Christian M. Knoblauch, Boise, Idaho, for appellant; Kenneth M. Sebby, Esq., Field Solicitor's Office, Boise, Idaho, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

The Bennett Hills Resource Area Manager, Bureau of Land Management (BLM), has moved to dismiss a protest titled "Appeal of Decision Notice and FONSI on Big Deer Creek Salvage Timber Sale" filed by the Idaho Conservation League on July 11, 1994, that was directed against a timber sale advertised on June 22, 1994. Citing 43 CFR 5003.3(c), BLM contends that appellant failed to timely protest the notice of sale, and that the tardy objection received on July 11, 1994, could not be considered under the forest management regulations published at 43 CFR Part 5000, because it arrived at BLM's office 19 days after publication of the notice of sale. The cited regulation requires protests of timber sales to be made no later than 15 days following advertisement of the sale. What the Area Manager actually seeks in this case is summary disposition of the appeal for the reason that he properly rejected the protest as untimely. We grant that disposition and affirm his decision.

Appellant has answered the motion to dismiss, arguing that actions by BLM staff members led to a belief that a filing on July 11 was timely, because "proper appeal procedures were not sent to the ICL as promised" and because a BLM employee "assured me that an appeal postmarked by July 7, 1994 would be assured consideration by the Shoshone BLM." (Emphasis in original.) Appellant argues that these circumstances require consideration of the appeal documents filed with BLM on July 11, notwithstanding the existence of Departmental rules to the contrary.

[1] Forest management appeals regulations published at 43 CFR Part 5000 provide that in timber sale cases the decision document that becomes subject to appeal is the notice of sale itself. See 43 CFR 5003.2(b). The regulation requires that objections to the sale are to be filed in the form of protests (see 43 CFR 5003.3(a)) that are to "contain a written statement of reasons for protesting the decision." 43 CFR 5003.3(b); In re Bare Nelson Timber Sale, 126 IBLA 93, 100 (1993). A strict 15-day time limitation is established for filing protests; the rule does not provide for extensions of time or exceptions for late filed protests. The rule provides, instead, that: "Protests received more than 15 days after the publication of the * * * notice of sale are not timely filed and shall not be considered." 43 CFR 5003.3(c).

The rule is clear and directory; it does not provide for a grace period, but requires that a protest, if it is to be considered timely filed, must be "received" by BLM within 15 days of publication of a notice. Mailing a protest within the 15-day period will not alone, therefore, suffice to achieve compliance with the filing regulation in the case of a forest management decision to sell timber. This strict time limitation is consistent with the regulatory plan established for forest management decisions, which includes a provision that such decisions are to have immediate effect when issued, notwithstanding that an appeal may be taken from a decision to deny a protest. See 43 CFR 5003.1 and 5003.3(f); In re Eastside Salvage Timber Sale, 128 IBLA 114, 115 (1993). The rules are intended to expedite implementation of forest management decisions. It is a primary purpose of the rules that protests of such decisions be handled in a timely manner. See summary to final rulemaking 43 CFR Part 5000, 49 FR 28560 (July 13, 1984). As the supplementary information published with rulemaking for Part 5000 explained concerning the 15-day limitation on protests, it "provides for a definite period within which a sale can be protested and provides the authorized officer with time to respond to the protests, make changes if necessary, cancel the sale or, if the protest is denied, hold the sale as scheduled." Id. at 28561.

The record on appeal establishes that the protest sought to be filed by appellant was not received by BLM within 15 days following publication of the notice of timber sale at issue. Consequently, the protest was not timely filed under provision of 43 CFR 5003.3(c). It was therefore properly rejected by BLM as untimely filed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

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